

ORDER SHEET  
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Bail Application No.S-330 of 2025  
(Abdul Waheed Shar Vs. The State)

Crl. Bail Application No.S-331 of 2025.  
(Abdul Waheed Shar Vs. The State)

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
-----------------	-------------------------------

Hearing of post-arrest bail

- 1. For orders on office objections at flag ‘A’
- 2. For hearing of bail application.

ORDER.  
05-05-2025.

Mr. Asif Ali Jatoi advocate for the applicant/accused.  
Mr. Khalil Ahmed Maitlo, Deputy P.G for the State.

\*\*\*\*\*

Ali Haider ‘Ada’,J:- By this single order, I intend to dispose of both bail applications, one pertaining to Crime No. 52/2025, registered for offence punishable under Sections 212 and 120-B of the Pakistan Penal Code read with Sections 23(1) and 27 of the Sindh Arms Act, 2013; and the other arising out of Crime No. 54/2024, registered under Section 23(1) of the Sindh Arms Act, 2013 at Police Station Rohri. Since the applicant is nominated in both FIRs, he initially approached the learned Ist Additional Sessions Judge, Sukkur, for post-arrest bail in both crime numbers; however, his bail applications were dismissed by learned trial Court. Consequently, the applicant has now filed the present two separate bail applications before this Court, seeking post-arrest bail in each of the said cases.

2. The brief facts of both cases are that on 16-03-2025, the complainant, a police officer, along with his subordinate staff, was on patrol in the area in response received spy information, indicating that weapons were being transported to criminal elements via a courier service. Upon reaching the pointed location, the police apprehended three accused persons and recovered Kalashnikov bullets from their possession. During interrogation, the accused disclosed their identities and further recovery of pistols was affected from all of them. From the possession of present applicant, one TT pistol along with 10 packets of Kalashnikov bullets was recovered. Consequently, FIR No. 52/2025 was registered for the joint recovery, while a separate FIR bearing Crime No. 54/2025 was lodged specifically in relation to the recovery of the TT pistol from the applicant.

3. Learned counsel for the applicant contends that the police failed to associate any private or independent witness in the recovery proceedings, despite the alleged place of incident being a busy and populated area of the city. Furthermore, it is argued that no action has been initiated against the courier company, even though the prosecution own version alleges that the weapons were transported through said courier service. It is further submitted that the alleged recovery was affected through a single joint recovery memo, which renders it inadmissible in evidence under the settled principles of law. The learned counsel prays for grant of post-arrest bail on the ground that the applicant is no more required for further investigation. Reliance is placed upon the case of *Muhammad Usman v. The State* (2017 YLR Note 66).

4. On the contrary, the learned State Counsel vehemently opposes the bail applications, arguing that a substantial quantity of arms and

ammunition was recovered and the applicant is directly involved in the commission of the alleged offence; therefore, he is not entitled to the concession of bail.

5. Heard arguments and perused the material available on record

6. First and foremost, it is an admitted position of the prosecution that a single joint recovery memo was prepared in respect of two separate FIRs. In view of the dictum laid down by the Honourable Supreme Court in the case of *Muhammad Riaz and others v. The State and others* (2024 SCMR 1839), such a joint recovery memo loses its evidentiary value. The Apex Court has categorically held that recovery affected through a joint memo in relation to separate cases is not admissible in evidence. This legal principle is further reinforced by the judgment of this Court in *Muhammad Usman v. The State* (*Supra*) wherein two FIRs had been registered against the accused and co-accused for the alleged recovery of separate weapons from their possession. However, only one joint mashirnama (memo of recovery and arrest) had been prepared. The Court held that such a mashirnama was legally defective and inadmissible in the eyes of law, thereby granting bail to the accused. Hence, in the present case as well, the reliance on a joint recovery memo spanning two distinct FIRs undermines the credibility of the prosecution case at this stage, rendering the matter one of further inquiry.

7. Secondly, when police officials act upon prior spy information, they are under a legal obligation to associate independent witnesses from the locality to ensure transparency and credibility in the proceedings. However, in the present case, all witnesses cited by the prosecution are police officials and no independent source has been joined in the recovery process. This omission adversely affects the evidentiary worth of the prosecution case.

Moreover, there appears to be no likelihood of the applicant tampering with the prosecution evidence, particularly when he is no longer required for further investigation. Reliance is placed upon the case of *Zabiullah alias Zubair and 2 others v. The State* (2021 YLR 2190) and case of *Dilawar v. The State* (2023 PCrLJ Note 684), Further in case of *Ayaz Ali v. The State* (2014 PLD Sindh 282) *it has been held that:*

*9. The joint reading of section 23 (1)(a) and section 24 of the Act would show that the subsection (1)(a) of section 23 of the Act deals with situation where one acquires, possession carries or control any firearm or ammunition in contravention of section 3 (i.e. 'license, for acquisition and possession of fire-arms and ammunition) while the section 24 of the Act punishment for possessing arms or ammunition licensed or unlicensed with the aim to use them for any unlawful purpose. It is II germane to append here that plain reading of sections 23 and 24, elucidate that section 23(1)(a) provides maximum punishment upto 14 years, whereas section 24 provides upto ten years, thus, apparently instant case, wherein recovery is pistol, which falls within the definition of "arms" as provided in the section 2, which carries maximum sentence ten years as provided in section 24 of the Sindh Arms Act, 2013.*

*10. As the quantum of punishment has to be determined by the trial Court. In such like cases whether accused would be liable to the maximum punishment provided for the offence and also as to whether the punishment in case of proof of the guilt after trial in the circumstances would fall under the prohibitory clause are the questions requiring further probe, as the maximum punishment provided under section 24 of the S.A.A., 2013, is ten years, discretion is left upon the trial Court by the Legislature to decide the fate of the case according to the circumstances of the case commensuration with the nature of case. The record is also silent as to whether the applicant is a habitual or previous convict, hence all these facts makes the case against him as that of further inquiry.*

8. It is a well-established principle of criminal jurisprudence that bail, not jail is the norm, particularly where the case requires further inquiry or lacks compelling evidence to justify continued detention. The purpose of bail is to ensure the presence of the accused during trial and not to punish him before conviction. In the present matter, where the prosecution case is marred by legal infirmities such as absence of independent witnesses, reliance on a joint recovery memo in two separate FIRs and no further requirement of the applicant in investigation, the continued incarceration of

the applicant amounts to pre-trial punishment, which is neither warranted by law nor justified on facts.

9. In view of the foregoing reasons, the applicant/accused named above makes out a case for grant of post arrest Bail. Accordingly, both the Bail Applications are allowed and applicant/accused is admitted to post arrest in Crime No.52 of 2025, subject to furnishing his solvent surety in the sum of Rs. 100,000/- (One lac) and P.R Bond in the like amount to the satisfaction of learned trial Court as well also admitted to post arrest in Crime No. 54 of 2025 subject to furnishing his solvent surety in the sum of Rs. 100,000/- (One lac) and P.R Bond in the like amount to the satisfaction of learned trial Court, as submit the surety in each crime separately.

10. Needless to mention that the observation made hereinabove are tentative in nature and shall not prejudice the case of either party at the time of trial.

***J U D G E***

***Ihsan/PS.***